IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8905 OF 2003

Babasaheb Balu Patil & Anr. : Petitioners

(Orig. Plaintiffs)

V/s.

Smt.Anandi Krishnat Patil & Anr. : Respondents

...

Mr.S.S.Patwardhan for the petitioners.

Mr.V.B.Rajure for respondent nos.1 & 2.

...

CORAM : S.A. BOBDE, J.

March 22, 2005.

P.C.:

1. The petitioners have challenged the order of the appellate Court dated 9.10.2003, the relevant portion of which reads as follows:-

> "1. Misc. Civil Appeal No.178/2003 is hereby allowed.
>
> 2. Order below Exh.5 passed by learned trial court regarding temporary injunction is hereby set aside.

3. Application is dismissed.

4. Misc. civil appeal No.179/2003 is hereby dismissed.

5. The order passed below Exh.19, is hereby confirmed."

2. Mr.Patwardhan, learned counsel for the petitioners, submits that clause 1 of the order is inconsistent with clause 5 of the order. According to the learned counsel, and this is not disputed by Mr.Rajure for respondent nos.1 & 2, Misc. Civil Appeal no.178 of 2003 was filed by the respondents against rejection of exh.19. Exh.19 is the application filed by the respondents-defendants for injunction in this suit which si filed by the petitioners. The appellate Court has vide clause 1 purported to allow the appeal. If the appeal is taken as allowed, then it becomes clearly inconsistent with clause 5 of the order which states that the order passed below exh.19 is "hereby confirmed", because the trial Court has rejected exh.19. Even if this order is taken to be confirmed, then obviously the respondents in Misc. Civil Appeal no.178 of 2003, which is against the rejection of exh.19, could not

have been allowed.

3. A similar error seems to have arisen in respect of the petitioners' injunction application exh.5. The trial Court granted the application. The respondents appealed against the grant of injunction. By clause 2 of the operative part of the order, the appellate Court has set aside the injunction. However, vide clause 4, Misc. Civil Appeal no.179/2003 filed by the respondents against the grant of injunction is "hereby dismissed". This order also creates a contradictory position.

4. There seems to be some error arising out of either non-applciation of mind or in the nature of a typographical error. In either case, the order is vitiated and creates unnecessary confusion. Therefore, the order is set aside. The matter is remanded back to the District Court, Kolhapur, for a fresh decision.

5. Pending the appeal, the parties are directed to maintain status quo.

6. The Writ Petition is, accordingly, disposed of.

Sd/-

S.A. BOBDE, J.